

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,)	
)	
Plaintiff-Counterclaim Defendant,)	
)	
v.)	
)	
LEACHCO, INC.,)	
)	
Defendant-Counterclaim Plaintiff,)	No. 3:07-cv-01600-ARC
)	
and)	(Judge A. Richard Caputo)
)	
JAMIE S. LEACH,)	(electronically filed)
)	
Counterclaim Plaintiff,)	
)	
v.)	
)	
JOHN M. KIEFER, JR.,)	
)	
Counterclaim Defendant.)	

THIRD PARTY PLAINTIFFS' UNOPPOSED MOTION TO STRIKE

The Third Party Plaintiffs move, pursuant to Rule 12(f), Federal Rules of Civil Procedure, to strike the patent invalidity and inequitable conduct defenses alleged at page 3, paragraph 16, and page 4, paragraph 21 of the Answer of Third Party Defendant John M. Kiefer, Jr., filed February 1, 2008 (Doc. 25).

The Court addressed identical invalidity and inequitable conduct defenses with regard to the motion for leave to amend filed by Counterclaim Defendant Babyage.com, Inc. (Doc. 16). In its Order of February 12, 2008, the Court denied leave to assert these defenses, because of noncompliance with Federal Rules 8 and 9(b) (Doc. 29 at 2). Because the same insufficient defenses are being asserted by Mr. Kiefer, we are moving to strike them for the same reasons addressed with reference to the Babyage.com, Inc. pleading.

The undersigned counsel certifies that he has conferred by telephone with Dr. Andrew J. Katsock, III, counsel for Third Party Defendant John M. Kiefer, Jr. and received his concurrence to the instant Motion.

A proposed Order is submitted herewith.

Respectfully submitted,

s/ Gary Peterson
Gary Peterson
OK 7068
211 N. Robinson Ave., Suite 450 South
Oklahoma City, OK 73102
telephone: (405) 606-3367
fax: (866) 628-0506
email: gp@garypeterson.com

Sean V. Kemether
PA 70816
Kelly Grimes Pietrangelo & Vakil, P.C.
P.O. Box 1048
Media, PA 19063-0848
telephone: 610-565-2669
fax: 610-565-0780
email: skemether@kgpv.com

Attorneys for Third Party Plaintiffs

CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Babyage.com, Inc. and John M. Kiefer, Jr., on February 19, 2008.

s/ Gary Peterson